

For discussion on  
16 December 2010

**Legislative Council Panel on Manpower**

**Productivity assessment of persons with disabilities  
under the statutory minimum wage regime –  
proposed criteria for approved assessors and methods of assessment**

**Purpose**

This paper seeks Members' views on the proposed criteria for approved assessors and methods of assessment for the productivity assessment of persons with disabilities under the statutory minimum wage (SMW) regime. The proposed arrangements have been drawn up in collaboration with relevant stakeholders.

**Background**

2. As enshrined in the Minimum Wage Ordinance (MWO) passed by the Legislative Council (LegCo) on 17 July 2010, employees who are persons with disabilities, like their able-bodied counterparts, will be protected by the SMW. Nevertheless, taking account of the possible employment difficulties encountered by some persons with disabilities, the MWO also provides for a special arrangement for them. Specifically, persons with disabilities whose productivity may be impaired by their disabilities will have the right to choose to have their productivity assessed to help determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. To forestall abuse, the right to invoke the assessment is vested in persons with disabilities rather than the employer. This special arrangement has been devised after elaborate discussion involving persons with disabilities, parent groups, rehabilitation organisations, employers of persons with disabilities and the Equal Opportunities Commission. The Labour Advisory Board (LAB) and the LegCo Panel on Manpower were also consulted in the process.

3. Under the MWO, the Commissioner for Labour may, by notice published in the Gazette, specify the kinds of persons in the definition of "approved assessor" and the requisite length of experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities as well as the methods of assessment.

## Criteria for Approved Assessors

4. In the course of consultations with stakeholders, there have been views that the quality and quantity of approved assessors are key to the smooth and effective implementation of the assessment mechanism. After protracted discussion with stakeholders, we propose that an approved assessor should fall into any of the following categories:

- (i) a registered occupational therapist who, in that capacity, possesses not less than 3 years' experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years;
- (ii) a registered physiotherapist who, in that capacity, possesses not less than 3 years' experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years;
- (iii) a registered social worker who, in that capacity, possesses not less than 3 years' experience in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 7 years; or
- (iv) a vocational rehabilitation practitioner being currently engaged, or a veteran vocational rehabilitation practitioner who had been engaged, by the organisation(s) recognised by the Labour Department (LD)<sup>1</sup> for not less than 5 years in the provision of vocational rehabilitation or other services in relation to the employment of persons with disabilities during the immediately preceding 10 years, and with the recommendation of the aforementioned organisation(s) to become an approved assessor.

5. To ensure the quality of productivity assessments conducted by approved assessors, all eligible applicant assessors should complete satisfactorily training arranged by LD in order to become approved assessors. We may withdraw the approval so granted to an assessor who is found unable or unfit to carry out the duties of the approved assessor owing to poor performance or any sufficient cause. Information of the assessors would be included in a register of approved assessors. A person with disabilities who decides to invoke the assessment mechanism can select any of the approved assessors from the register to conduct the assessment.

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<sup>1</sup> These organisations will include non-governmental organisations providing vocational rehabilitation services with subvention from the Social Welfare Department (SWD), training bodies appointed by the Employees Retraining Board to provide training courses for persons with disabilities, SWD, the Hospital Authority, the Vocational Training Council, self-help groups, etc.

## **Methods of Assessment**

6. The majority view gauged during consultations with stakeholders is that the assessment mechanism should not be complicated, otherwise it would create undue pressure on the persons with disabilities, which would in turn affect their performance during the assessment, and/or dampen employers' willingness to employ persons with disabilities. Having regard to the multifarious nature and modalities of work of persons with disabilities, only the broad principles and major elements of the assessment methods will be stipulated in the notice to be gazetted under the MWO. The operational details of the productivity assessment will be set out in the form of administrative guidelines to be provided to the approved assessors.

### *The basic principles*

7. As the purpose of an assessment is to determine the degree (if any) to which the productivity of the person with disabilities in performing the work required under the contract of employment is affected by his disability, the assessment must be conducted in the actual workplace of the person with disabilities. Prior to conducting the assessment, the approved assessor must clearly explain to the person with disabilities and the employer their respective rights and responsibilities under the relevant provisions of the MWO. In particular, the right to invoke an assessment is vested in the person with disabilities, not the employer. The approved assessor should be objective and impartial throughout the process of conducting an assessment. It is incumbent on the approved assessor to ensure that no conflict of interest will arise between his duties involved in conducting the assessment and any other matters in relation to him.

### *The productivity assessment*

8. In conducting the productivity assessment, the approved assessor should collect detailed information on the work of the person with disabilities (including the duties, requirements and procedures of the work) through the employer, the person with disabilities and, if appropriate, any other relevant person(s) conducive to the understanding of the work of the person with disabilities (such as other employee(s) of the employer performing the same or similar work). Based on the detailed information on the work collected, the approved assessor should exercise his professional expertise and decide on the appropriate factor(s), namely working speed, quantity and quality of work or other requirements for performing the work, to be considered in the assessment. With reference to the factor(s) selected, the approved assessor should, by adopting suitable means such as observation and recording performance data, assess the performance of the person with disabilities.

9. If the approved assessor, having regard to all the facts and evidence available, is of the view that the performance of the person with disabilities and degree of productivity on the day of assessment is adversely affected by any reasons that cause him not to perform at full potential, the approved assessor may reasonably adjust upwards the degree of productivity of the person with disabilities. The approved assessor is required to sign on the assessment certificate after the assessment is completed.

### **Cost of Assessment**

10. There are views from most stakeholders that those persons with disabilities whose productivity is affected by their disabilities and thus need to invoke the special arrangement belong to the more vulnerable group and should not be asked to bear the assessment cost. Nor should the employers shoulder the cost so as not to deter them from employing persons with disabilities. After discussion with the relevant professional associations of approved assessors and careful consideration on the quantum of the assessment cost involved, the Government has decided to take on the responsibility and pay the assessment cost.

### **Consultation with the Labour Advisory Board**

11. The LAB discussed at its meeting on 6 December 2010 the proposed criteria for approved assessors and methods of assessment as set out in paragraphs 4 to 9 above. LAB members unanimously supported the proposed arrangements and emphasised that the assessment mechanism should be simple so as not to dampen employers' willingness to employ persons with disabilities. LAB also welcomed the Government's decision to shoulder the assessment cost.

### **Way Forward**

12. To tie in with the proposed implementation of the SMW on 1 May 2011 and allow time for the necessary preparatory work including the recruitment and training of assessors, we aim to publish in the Gazette and table at LegCo by early 2011 the notices on the criteria for approved assessors and methods of assessment.

## **Advice Sought**

13. Members' views are invited on the proposed criteria for approved assessors and methods of assessment as set out in paragraphs 4 to 9 above.

Labour and Welfare Bureau  
Labour Department  
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